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Superior Court of California,  
County of Placer

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF PLACER**

MONICA CUTHBERT, SHERRI MAYER, BELA  
CRISPIN, CORRINE SALAZAR-ROSE, individuals,  
on behalf of themselves and on behalf of all persons  
similarly situated,

Plaintiffs,

vs.

AMERICAN PACIFIC MORTGAGE  
CORPORATION, a California Corporation; and DOES  
1 through 50, inclusive,

Defendants.

Case No. S-CV-0049369

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION COMPLAINT  
FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246; and
10. CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699, *et seq.* FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 11040, SUBDIVISION 5(A)-(B), AND THE APPLICABLE WAGE ORDER(S).

**DEMAND FOR A JURY TRIAL**

1 Plaintiffs Monica Cuthbert, Sherri Mayer, Bela Crispin and Corrine Salazar-Rose (“PLAINTIFFS”),  
2 individuals, on behalf of themselves and all other similarly situated current and former employees allege on  
3 information and belief, except for their own acts and knowledge which are based on personal knowledge,  
4 the following

5 **THE PARTIES**

6 1. Defendant American Pacific Mortgage Corporation is a California Corporation that at all  
7 relevant times mentioned herein conducted and continues to conduct substantial business in the state of  
8 California.

9 2. DEFENDANT is a California based mortgage company specializing in home loans and  
10 other related services.

11 3. Plaintiff, Monica Cuthbert, was employed by DEFENDANT in California from September  
12 of 2019 to June 13, 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid  
13 on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and  
14 overtime wages due for all time worked.

15 4. Plaintiff, Sherri Mayer, was employed by DEFENDANT in California from May 2021  
16 through April 3, 2023 and was at all times classified by DEFENDANT as a non-exempt employee, paid  
17 on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and  
18 overtime wages due for all time worked.

19 5. Plaintiff, Bela Crispin, was employed by DEFENDANT in California from June 21, 2021  
20 to July 22, 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an  
21 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and  
22 overtime wages due for all time worked.

23 6. Plaintiff, Corrine Salazar-Rose, was employed by DEFENDANT in California from June  
24 of 2021 through July 22, 2022 and was at all times classified by DEFENDANT as a non-exempt employee,  
25 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum  
26 and overtime wages due for all time worked.

27 7. PLAINTIFFS bring this Class Action on behalf of themselves and a California class, defined  
28 as all individuals who are or previously were employed by Defendant American Pacific Mortgage

1 Corporation (“DEFENDANT”) in the State of California who were classified as nonexempt (the  
2 “CALIFORNIA CLASS”) from October 27, 2018 to the earlier of preliminary approval or December 1,  
3 2023 who did not sign arbitration agreements (the “CALIFORNIA CLASS PERIOD”), and excluding non-  
4 exempt employees who were employed by DEFENDANT as loan officer assistants or processors or who  
5 performed equivalent duties to loan office assistants and processors up to February 18, 2020. The amount  
6 in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars  
7 (\$5,000,000.00).

8 8. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA CLASS  
9 in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CALIFORNIA  
10 CLASS PERIOD caused by DEFENDANT’s policy and practice which failed to lawfully compensate these  
11 employees. DEFENDANT’s policy and practice alleged herein was an unlawful, unfair and deceptive  
12 business practice whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the  
13 other members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA  
14 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named  
15 PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been economically injured  
16 by DEFENDANT’s past and current unlawful conduct, and all other appropriate legal and equitable relief.

17 9. The true names and capacities, whether individual, corporate, subsidiary, partnership,  
18 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFFS  
19 who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474.  
20 PLAINTIFFS will seek leave to amend this Complaint to allege the true names and capacities of Does 1  
21 through 50, inclusive, when they are ascertained. PLAINTIFFS are informed and believes, and based upon  
22 that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through  
23 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately  
24 caused the injuries and damages hereinafter alleged.

25 10. The agents, servants and/or employees of the Defendants and each of them acting on behalf  
26 of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or  
27 employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the  
28 Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally

1 attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFFS and  
2 the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct  
3 of the Defendants' agents, servants and/or employees.

#### 4 5 **THE CONDUCT**

6 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required  
7 to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning the time  
8 during which an employee is subject to the control of an employer, including all the time the employee is  
9 suffered or permitted to work. DEFENDANT requires PLAINTIFFS and CALIFORNIA CLASS Members  
10 to work without paying them for all the time they are under DEFENDANT's control. Among other things,  
11 DEFENDANT requires PLAINTIFFS to work while clocked out during what is supposed to be  
12 PLAINTIFF's off-duty meal break. PLAINTIFFS were from time to time interrupted by work assignments  
13 while clocked out for what should have been PLAINTIFFS' off-duty meal break. DEFENDANT, as a  
14 matter of established company policy and procedure, administers a uniform practice of rounding the actual  
15 time worked and recorded by PLAINTIFFS and CALIFORNIA CLASS Members, always to the benefit of  
16 DEFENDANT, so that during the course of their employment, PLAINTIFFS and CALIFORNIA CLASS  
17 Members are paid less than they would have been paid had they been paid for actual recorded time rather  
18 than "rounded" time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFFS and  
19 CALIFORNIA CLASS Members to perform work off the clock in that DEFENDANT, as a condition of  
20 employment, required these employees to submit to mandatory temperature checks and symptom  
21 questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the  
22 workday. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeit minimum wage,  
23 overtime wage compensation, and off-duty meal breaks by working without their time being correctly  
24 recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay  
25 PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, is evidenced by  
26 DEFENDANT's business records.

27 12. State and federal law provides that employees must be paid overtime and meal and rest break  
28 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFFS and other CALIFORNIA

1 CLASS Members are compensated at an hourly rate plus incentive pay that is tied to specific elements of  
2 an employee's performance.

3 13. The second component of PLAINTIFFS' and other CALIFORNIA CLASS Members'  
4 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFFS and other  
5 CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANT. The non-  
6 discretionary incentive program provided all employees paid on an hourly basis with incentive compensation  
7 when the employees met the various performance goals set by DEFENDANT. However, when calculating  
8 the regular rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFFS and other  
9 CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation as part of  
10 the employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest break  
11 premium pay. Management and supervisors described the incentive program to potential and new  
12 employees as part of the compensation package. As a matter of law, the incentive compensation received  
13 by PLAINTIFFS and other CALIFORNIA CLASS Members must be included in the "regular rate of pay."  
14 The failure to do so has resulted in a underpayment of overtime compensation and meal and rest break  
15 premiums to PLAINTIFFS and other CALIFORNIA CLASS Members by DEFENDANT.

16 14. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS  
17 Members were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully  
18 relieved of duty for their meal periods. PLAINTIFFS and other CALIFORNIA CLASS Members were  
19 required from time to time to perform work as ordered by DEFENDANT for more than five (5) hours during  
20 some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to provide  
21 PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays  
22 in which these employees were required by DEFENDANT to work ten (10) hours of work. DEFENDANT  
23 also engaged in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFFS  
24 and other CALIFORNIA CLASS Members. PLAINTIFFS and other members of the CALIFORNIA  
25 CLASS therefore forfeit meal breaks without additional compensation and in accordance with  
26 DEFENDANT's corporate policy and practice.

27 15. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS  
28 Members were also required from time to time to work in excess of four (4) hours without being provided

1 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)  
2 minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest  
3 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time  
4 to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten  
5 (10) hours or more from time to time. PLAINTIFFS and other CALIFORNIA CLASS Members were also  
6 not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage Order  
7 requires employers to provide employees with off-duty rest periods, which the California Supreme Court  
8 defined as time during which an employee is relieved from all work related duties and free from employer  
9 control. In so doing, the Court held that the requirement under California law that employers authorize and  
10 permit all employees to take rest period means that employers must relieve employees of all duties and  
11 relinquish control over how employees spend their time which includes control over the locations where  
12 employees may take their rest period. Employers cannot impose controls that prohibit an employee from  
13 taking a brief walk - five minutes out, five minutes back. Here, DEFENDANT's policy restricted  
14 PLAINTIFFS and other CALIFORNIA CLASS Members from unconstrained walks and is unlawful based  
15 on DEFENDANT's rule which states PLAINTIFFS and other CALIFORNIA CLASS Members cannot  
16 leave the work premises during their rest period.

17 16. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record and  
18 pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these employees  
19 worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay  
20 PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, meaning the time during  
21 which an employee was subject to the control of an employer, including all the time the employee was  
22 permitted or suffered to permit this work. DEFENDANT required these employees to work off the clock  
23 without paying them for all the time they were under DEFENDANT's control. As such, DEFENDANT  
24 knew or should have known that PLAINTIFFS and the other members of the CALIFORNIA CLASS were  
25 under compensated for all time worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS  
26 Members forfeited time worked by working without their time being accurately recorded and without  
27 compensation at the applicable minimum wage and overtime wage rates. To the extent that the time worked  
28

1 off the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum wages  
2 for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

3 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members  
4 of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among  
5 other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer  
6 shall furnish each of his or her employees with an accurate itemized wage statement in writing showing,  
7 among other things, gross wages earned and all applicable hourly rates in effect during the pay period and  
8 the corresponding amount of time worked at each hourly rate. PLAINTIFFS and CALIFORNIA CLASS  
9 Members were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly  
10 rates during the pay period and the total hours worked, and the applicable pay period in which the wages  
11 were earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT  
12 provided to PLAINTIFFS and other CALIFORNIA CLASS Members failed to identify such information.  
13 More specifically, the wage statements failed to identify the accurate total hours worked each pay period.  
14 When the hours shown on the wage statements were added up, they did not equal the actual total hours  
15 worked during the pay period in violation of Cal. Lab. Code 226(a)(2). DEFENDANT also violated Cal.  
16 Lab. Code Section 226(a)(8) for failing to list the correct legal entity that employed PLAINTIFFS and other  
17 CALIFORNIA CLASS Members. Further, DEFENDANT violated Cal. Lab. Code Section 226(a)(9) by  
18 failing to list the hours worked and hourly rates for the “Retro” wage payments, which were regular wage  
19 payments. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to  
20 PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor Code 226  
21 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFFS and the other members of the  
22 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

23 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed satisfied  
24 by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than  
25 seven (7) calendar days following the close of the payroll period. Cal. Lab. Code § 210 provides:

26 [I]n addition to, and entirely independent and apart from, any other penalty provided in this article,  
27 every person who fails to pay the wages of each employee as provided  
28 in Sections. . . .204. . . shall be subject to a civil penalty as follows: (1) For any initial violation, one  
hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation,  
or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each  
employee, plus 25 percent of the amount unlawfully withheld.

1           19.     DEFENDANT from time to time failed to pay PLAINTIFFS and members of the  
2 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll period in  
3 accordance with Cal. Lab. Code § 204(d), including but not limited to for the “Hourly” regular wage  
4 payments.

5           20.     DEFENDANT underpaid sick pay wages to PLAINTIFFS and other CALIFORNIA CLASS  
6 Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code Section 246.  
7 Specifically, PLAINTIFFS and other non-exempt employees earn non-discretionary remuneration. Rather  
8 than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other  
9 CALIFORNIA CLASS Members at their base rates of pay.

10          21.     Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt  
11 employees be calculated by dividing the employee’s total wages, not including overtime premium pay, by  
12 the employee’s total hours worked in the full pay periods of the prior 90 days of employment.

13          22.     DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the regular  
14 rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely earned non-discretionary  
15 incentive wages which increased their regular rate of pay. However, when sick pay was paid, it was paid  
16 at the base rate of pay for PLAINTIFFS and members of the CALIFORNIA CLASS, as opposed to the  
17 correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

18          23.     As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS and other  
19 members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time penalties  
20 pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and believes and based thereon  
21 alleges that such failure to pay sick pay at regular rate was willful, such that PLAINTIFFS and members of  
22 the CALIFORNIA CLASS whose employment has separated are entitled to waiting time penalties pursuant  
23 to Cal. Lab. Code Sections 201-203.

24          24.     Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer to collect  
25 or receive from an employee any part of wages theretofore paid by said employer to said employee.”  
26 DEFENDANT failed to pay all compensation due to PLAINTIFFS and other CALIFORNIA LABOR SUB-  
27 CLASS Members, made unlawful deductions from compensation payable to PLAINTIFFS and  
28 CALIFORNIA LABOR SUB-CLASS Members, failed to disclose all aspects of the deductions from

1 compensation payable to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members, and thereby  
2 failed to pay these employees all wages due at each applicable pay period and upon termination.  
3 PLAINTIFFS and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal  
4 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

5 25. DEFENDANT intentionally and knowingly failed to reimburse and indemnify  
6 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses incurred by  
7 the PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging their  
8 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required to  
9 indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code  
10 § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures  
11 or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or  
12 her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of  
13 obeying the directions, believed them to be unlawful."

14 26. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS Members  
15 as a business expense, were required by DEFENDANT to use their own personal cellular phones as a result  
16 of and in furtherance of their job duties as employees for DEFENDANT but are not reimbursed or  
17 indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones and  
18 home offices for DEFENDANT's benefit. Specifically, PLAINTIFFS and other CALIFORNIA CLASS  
19 Members were required by DEFENDANT to use their personal cellular phones and home offices. As a  
20 result, in the course of their employment with DEFENDANT, PLAINTIFF and other members of the  
21 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not limited to,  
22 costs related to the use of their personal cellular phones and home offices all on behalf of and for the benefit  
23 of DEFENDANT.

24 27. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally required off-  
25 duty meal and rest breaks to PLAINTIFFS as required by the applicable Wage Order and Labor Code and  
26 failed to pay PLAINTIFFS all minimum and overtime wages due to PLAINTIFFS. DEFENDANT did not  
27 have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFFS and also  
28 failed to compensate PLAINTIFFS for PLAINTIFFS's missed meal and rest breaks. The nature of the work

1 performed by the PLAINTIFFS did not prevent PLAINTIFFS from being relieved of all of PLAINTIFFS's  
2 duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide  
3 PLAINTIFFS with the legally required meal periods is evidenced by DEFENDANT's business records.  
4 The amount in controversy for PLAINTIFFS individually does not exceed the sum or value of \$75,000.

### 5 **JURISDICTION AND VENUE**

6 28. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure,  
7 Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a  
8 Class Action on behalf of PLAINTIFFS and similarly situated employees of DEFENDANT pursuant to Cal.  
9 Code of Civ. Proc. § 382.

10 29. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395  
11 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT and DEFENDANT (i) currently  
12 maintains and at all relevant times maintained offices and facilities in this County and/or conducts  
13 substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County  
14 against members of the CALIFORNIA CLASS.

### 15 **THE CALIFORNIA CLASS**

16 30. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business  
17 Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to  
18 Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or  
19 previously were employed by Defendant American Pacific Mortgage Corporation ("DEFENDANT") in the  
20 State of California who were classified as nonexempt (the "CALIFORNIA CLASS") from October 27, 2018  
21 to the earlier of preliminary approval or December 1, 2023 who did not sign arbitration agreements (the  
22 "CALIFORNIA CLASS PERIOD"), and excluding non-exempt employees who were employed by  
23 DEFENDANT as loan officer assistants or processors or who performed equivalent duties to loan office  
24 assistants and processors up to February 18, 2020. The amount in controversy for the aggregate claim of  
25 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

26 31. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against  
27 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.  
28

1           32.     DEFENDANT, as a matter of company policy, practice and procedure, and in violation of  
2 the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the  
3 applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice  
4 whereby DEFENDANT failed to record all meal and rest breaks missed by PLAINTIFFS and other  
5 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required  
6 employees to perform this work and permits or suffers to permit this work.

7           33.     DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS  
8 Member was paid accurately for all meal and rest breaks missed as required by California laws. The  
9 DEFENDANT, however, as a matter of policy and procedure failed to have in place during the  
10 CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and  
11 every CALIFORNIA CLASS Member is paid as required by law. This common business practice is  
12 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as  
13 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”)  
14 as causation, damages, and reliance are not elements of this claim.

15           34.     The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS  
16 Members is impracticable.

17           35.     DEFENDANT violated the rights of the CALIFORNIA CLASS under California law by:

- 18               (a)     Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code §§  
19                       17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having in  
20                       place company policies, practices and procedures that failed to record and pay  
21                       PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time  
22                       worked, including minimum wages owed and overtime wages owed for work  
23                       performed by these employees; and,  
24               (b)     Committing an act of unfair competition in violation of the UCL, by failing to  
25                       provide the PLAINTIFFS and the other members of the CALIFORNIA CLASS  
26                       with the legally required meal and rest periods.

27           36.     This Class Action meets the statutory prerequisites for the maintenance of a Class Action  
28 as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 1 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the  
2 joinder of all such persons is impracticable and the disposition of their claims as a  
3 class will benefit the parties and the Court;
- 4 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
5 raised in this Complaint are common to the CALIFORNIA CLASS will apply to  
6 every member of the CALIFORNIA CLASS;
- 7 (c) The claims of the representative PLAINTIFFS are typical of the claims of each  
8 member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members  
9 of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on an  
10 hourly basis who was subjected to the DEFENDANT's deceptive practice and  
11 policy which failed to provide the legally required meal and rest periods to the  
12 CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFFS and  
13 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a result of  
14 DEFENDANT's employment practices. PLAINTIFFS and the members of the  
15 CALIFORNIA CLASS were and are similarly or identically harmed by the same  
16 unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,
- 17 (d) The representative PLAINTIFFS will fairly and adequately represent and protect  
18 the interest of the CALIFORNIA CLASS, and has retained counsel who are  
19 competent and experienced in Class Action litigation. There are no material  
20 conflicts between the claims of the representative PLAINTIFFS and the members  
21 of the CALIFORNIA CLASS that would make class certification inappropriate.  
22 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all  
23 CALIFORNIA CLASS Members.

24 37. In addition to meeting the statutory prerequisites to a Class Action, this action is properly  
25 maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 26 (a) Without class certification and determination of declaratory, injunctive, statutory  
27 and other legal questions within the class format, prosecution of separate actions by  
28 individual members of the CALIFORNIA CLASS will create the risk of:

1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFFS seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the

1 relatively small amount of economic losses sustained by the individual  
2 CALIFORNIA CLASS Members when compared to the substantial expense  
3 and burden of individual prosecution of this litigation;

4 2) Class certification will obviate the need for unduly duplicative litigation  
5 that would create the risk of:

6 A. Inconsistent or varying adjudications with respect to individual  
7 members of the CALIFORNIA CLASS, which would establish  
8 incompatible standards of conduct for the DEFENDANT; and/or,

9 B. Adjudications with respect to individual members of the  
10 CALIFORNIA CLASS would as a practical matter be dispositive  
11 of the interests of the other members not parties to the adjudication  
12 or substantially impair or impede their ability to protect their  
13 interests;

14 3) In the context of wage litigation because a substantial number of individual  
15 CALIFORNIA CLASS Members will avoid asserting their legal rights out  
16 of fear of retaliation by DEFENDANT, which may adversely affect an  
17 individual's job with DEFENDANT or with a subsequent employer, the  
18 Class Action is the only means to assert their claims through a  
19 representative; and,

20 4) A class action is superior to other available methods for the fair and  
21 efficient adjudication of this litigation because class treatment will obviate  
22 the need for unduly and unnecessary duplicative litigation that is likely to  
23 result in the absence of certification of this action pursuant to Cal. Code of  
24 Civ. Proc. § 382.

25 38. This Court should permit this action to be maintained as a Class Action pursuant to Cal.  
26 Code of Civ. Proc. § 382 because:

27 (a) The questions of law and fact common to the CALIFORNIA CLASS predominate  
28 over any question affecting only individual CALIFORNIA CLASS Members

1 because the DEFENDANT's employment practices are applied with respect to the  
2 CALIFORNIA CLASS;

3 (b) A Class Action is superior to any other available method for the fair and efficient  
4 adjudication of the claims of the members of the CALIFORNIA CLASS because  
5 in the context of employment litigation a substantial number of individual  
6 CALIFORNIA CLASS Members will avoid asserting their rights individually out  
7 of fear of retaliation or adverse impact on their employment;

8 (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical  
9 to bring all members of the CALIFORNIA CLASS before the Court;

10 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be able to  
11 obtain effective and economic legal redress unless the action is maintained as a  
12 Class Action;

13 (e) There is a community of interest in obtaining appropriate legal and equitable relief  
14 for the acts of unfair competition, statutory violations and other improprieties, and  
15 in obtaining adequate compensation for the damages and injuries which  
16 DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;

17 (f) There is a community of interest in ensuring that the combined assets of  
18 DEFENDANT are sufficient to adequately compensate the members of the  
19 CALIFORNIA CLASS for the injuries sustained;

20 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the  
21 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with  
22 respect to the CALIFORNIA CLASS as a whole;

23 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the  
24 business records of DEFENDANT; and,

25 (i) Class treatment provides manageable judicial treatment calculated to bring a  
26 efficient and rapid conclusion to all litigation of all wage and hour related claims  
27 arising out of the conduct of DEFENDANT as to the members of the  
28 CALIFORNIA CLASS.

1           39.     DEFENDANT maintains records from which the Court can ascertain and identify by job  
2 title each of DEFENDANT's employees who have been intentionally subjected to DEFENDANT's  
3 company policy, practices and procedures as herein alleged. PLAINTIFFS will seek leave to amend the  
4 Complaint to include any additional job titles of similarly situated employees when they have been  
5 identified.

6  
7                                   **THE CALIFORNIA LABOR SUB-CLASS**

8           40.     PLAINTIFFS further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and  
9 Ninth causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA  
10 CLASS who are or previously were employed by DEFENDANT in California, including any employees  
11 staffed with DEFENDANT by a third party, and classified as non exempt employees (the "CALIFORNIA  
12 LABOR SUB-CLASS") at any time during the period three (3) years prior to the filing of the complaint and  
13 ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD")  
14 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of  
15 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

16           41.     DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission  
17 ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally,  
18 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate  
19 compensation for the time worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR  
20 SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoyed the  
21 benefit of this work, required employees to perform this work and permitted or suffered to permit this work.  
22 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these  
23 employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent  
24 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT,  
25 the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

26           42.     DEFENDANT maintains records from which the Court can ascertain and  
27 identify by name and job title, each of DEFENDANT's employees who have been intentionally subjected  
28 to DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFFS will seek

1 leave to amend the complaint to include any additional job titles of similarly situated employees when they  
2 have been identified.

3 43. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all CALIFORNIA  
4 LABOR SUB-CLASS Members is impracticable.

5 44. Common questions of law and fact exist as to members of the CALIFORNIA LABOR SUB-  
6 CLASS, including, but not limited, to the following:

- 7 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay  
8 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for  
9 missed meal and rest breaks in violation of the California Labor Code and  
10 California regulations and the applicable California Wage Order;  
11 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other members  
12 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage  
13 statements;  
14 (c) Whether DEFENDANT has engaged in unfair competition by the above-listed  
15 conduct;  
16 (d) The proper measure of damages and penalties owed to the members of the  
17 CALIFORNIA LABOR SUB-CLASS; and,  
18 (e) Whether DEFENDANT's conduct was willful.

19 45. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under  
20 California law by:

- 21 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFFS and  
22 the members of the CALIFORNIA LABOR SUB-CLASS all wages due for  
23 overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code §  
24 1194;  
25 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately  
26 pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS  
27 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.  
28 Lab. Code §§ 1194 and 1197;

- 1 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the  
2 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized  
3 statement in writing showing the corresponding correct amount of wages earned by  
4 the employee;
- 5 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and  
6 the other members of the CALIFORNIA LABOR SUB-CLASS with all legally  
7 required off-duty, uninterrupted thirty (30) minute meal breaks and the legally  
8 required off-duty rest breaks;
- 9 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an  
10 employee is discharged or quits from employment, the employer must pay the  
11 employee all wages due without abatement, by failing to tender full payment and/or  
12 restitution of wages owed or in the manner required by California law to the  
13 members of the CALIFORNIA LABOR SUB-CLASS who have terminated their  
14 employment; and,
- 15 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the  
16 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred  
17 in the discharge of their job duties.

18 46. This Class Action meets the statutory prerequisites for the maintenance of a Class Action  
19 as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 20 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so  
21 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is  
22 impracticable and the disposition of their claims as a class will benefit the parties  
23 and the Court;
- 24 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
25 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS  
26 and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- 27 (c) The claims of the representative PLAINTIFFS are typical of the claims of each  
28 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the

1 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt  
2 employee paid on an hourly basis who was subjected to the DEFENDANT's  
3 practice and policy which failed to pay the correct amount of wages due to the  
4 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury  
5 as a result of DEFENDANT's employment practices. PLAINTIFFS and the  
6 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or  
7 identically harmed by the same unlawful, deceptive, and unfair misconduct  
8 engaged in by DEFENDANT; and,

9 (d) The representative PLAINTIFFS will fairly and adequately represent and protect  
10 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel  
11 who are competent and experienced in Class Action litigation. There are no  
12 material conflicts between the claims of the representative PLAINTIFFS and the  
13 members of the CALIFORNIA LABOR SUB-CLASS that would make class  
14 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS  
15 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS  
16 Members.

17 47. In addition to meeting the statutory prerequisites to a Class Action, this action is properly  
18 maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

19 (a) Without class certification and determination of declaratory, injunctive, statutory  
20 and other legal questions within the class format, prosecution of separate actions by  
21 individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk  
22 of:

23 1) Inconsistent or varying adjudications with respect to individual members  
24 of the CALIFORNIA LABOR SUB-CLASS which would establish  
25 incompatible standards of conduct for the parties opposing the  
26 CALIFORNIA LABOR SUB-CLASS; or,

27 2) Adjudication with respect to individual members of the CALIFORNIA  
28 LABOR SUB-CLASS which would as a practical matter be dispositive of

1 interests of the other members not party to the adjudication or substantially  
2 impair or impede their ability to protect their interests.

3 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
4 refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-  
5 CLASS, making appropriate class-wide relief with respect to the CALIFORNIA  
6 LABOR SUB-CLASS as a whole in that DEFENDANT fails to pay all wages due.  
7 Including the correct wages for all time worked by the members of the  
8 CALIFORNIA LABOR SUB-CLASS as required by law;

9 (c) Common questions of law and fact predominate as to the members of the  
10 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations  
11 of California Law as listed above, and predominate over any question affecting only  
12 individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is  
13 superior to other available methods for the fair and efficient adjudication of the  
14 controversy, including consideration of:

15 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS  
16 in individually controlling the prosecution or defense of separate actions in  
17 that the substantial expense of individual actions will be avoided to recover  
18 the relatively small amount of economic losses sustained by the individual  
19 CALIFORNIA LABOR SUB-CLASS Members when compared to the  
20 substantial expense and burden of individual prosecution of this litigation;

21 2) Class certification will obviate the need for unduly duplicative litigation  
22 that would create the risk of:

23 A. Inconsistent or varying adjudications with respect to individual  
24 members of the CALIFORNIA LABOR SUB-CLASS, which  
25 would establish incompatible standards of conduct for the  
26 DEFENDANT; and/or,

27 B. Adjudications with respect to individual members of the  
28 CALIFORNIA LABOR SUB-CLASS would as a practical matter

1 be dispositive of the interests of the other members not parties to  
2 the adjudication or substantially impair or impede their ability to  
3 protect their interests;

4 3) In the context of wage litigation because a substantial number of individual  
5 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their  
6 legal rights out of fear of retaliation by DEFENDANT, which may  
7 adversely affect an individual's job with DEFENDANT or with a  
8 subsequent employer, the Class Action is the only means to assert their  
9 claims through a representative; and,

10 4) A class action is superior to other available methods for the fair and  
11 efficient adjudication of this litigation because class treatment will obviate  
12 the need for unduly and unnecessary duplicative litigation that is likely to  
13 result in the absence of certification of this action pursuant to Cal. Code of  
14 Civ. Proc. § 382.

15 48. This Court should permit this action to be maintained as a Class Action pursuant to Cal.  
16 Code of Civ. Proc. § 382 because:

17 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS  
18 predominate over any question affecting only individual CALIFORNIA LABOR  
19 SUB-CLASS Members;

20 (b) A Class Action is superior to any other available method for the fair and efficient  
21 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-  
22 CLASS because in the context of employment litigation a substantial number of  
23 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their  
24 rights individually out of fear of retaliation or adverse impact on their employment;

25 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it  
26 is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS  
27 before the Court;  
28

- 1 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will  
2 not be able to obtain effective and economic legal redress unless the action is  
3 maintained as a Class Action;
- 4 (e) There is a community of interest in obtaining appropriate legal and equitable relief  
5 for the acts of unfair competition, statutory violations and other improprieties, and  
6 in obtaining adequate compensation for the damages and injuries which  
7 DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-  
8 CLASS;
- 9 (f) There is a community of interest in ensuring that the combined assets of  
10 DEFENDANT are sufficient to adequately compensate the members of the  
11 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 12 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the  
13 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief  
14 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 15 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable  
16 from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-  
17 CLASS consists of all CALIFORNIA CLASS Members who worked for  
18 DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-  
19 CLASS PERIOD; and,
- 20 (i) Class treatment provides manageable judicial treatment calculated to bring a  
21 efficient and rapid conclusion to all litigation of all wage and hour related claims  
22 arising out of the conduct of DEFENDANT as to the members of the  
23 CALIFORNIA LABOR SUB-CLASS.

24  
25 **FIRST CAUSE OF ACTION**

26 **For Unlawful Business Practices**

27 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

28 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

1           49.     PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and  
2 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

3           50.     DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code § 17021.

4           51.     California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair  
5 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes  
6 injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

7           Any person who engages, has engaged, or proposes to engage in unfair competition may  
8 be enjoined in any court of competent jurisdiction. The court may make such orders or  
9 judgments, including the appointment of a receiver, as may be necessary to prevent the use  
10 or employment by any person of any practice which constitutes unfair competition, as  
defined in this chapter, or as may be necessary to restore to any person in interest any  
money or property, real or personal, which may have been acquired by means of such unfair  
competition.

11 Cal. Bus. & Prof. Code § 17203.

12           52.     By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a  
13 business practice which violates California law, including but not limited to, the applicable Industrial Wage  
14 Order(s), the California Code of Regulations and the California Labor Code including Sections 204, 210,  
15 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the Fair Labor Standards Act and federal  
16 regulations promulgated thereunder, for which this Court should issue declaratory and other equitable relief  
17 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held  
18 to constitute unfair competition, including restitution of wages wrongfully withheld.

19           53.     By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in that  
20 these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or substantially  
21 injurious to employees, and were without valid justification or utility for which this Court should issue  
22 equitable and injunctive relief pursuant to Section 17203 of the California Business & Professions Code,  
23 including restitution of wages wrongfully withheld.

24           54.     By the conduct alleged herein, DEFENDANT’s practices were deceptive and fraudulent in  
25 that DEFENDANT’s policy and practice failed to provide the legally mandated meal and rest periods, the  
26 required amount of compensation for missed meal and rest periods and overtime and minimum wages owed,  
27 failed to timely pay wages, and failed to reimburse all necessary business expenses incurred, and failed to  
28 provide Fair Labor Standards Act overtime wages due for overtime worked as a result of failing to include

1 non-discretionary incentive compensation into their regular rates of pay for purposes of computing the  
2 proper overtime pay due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab.  
3 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,  
4 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code  
5 § 17203, including restitution of wages wrongfully withheld.

6 55. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and  
7 deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the other members of  
8 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

9 56. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and  
10 deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally required  
11 meal breaks to PLAINTIFFS and the other members of the CALIFORNIA CLASS as required by Cal. Lab.  
12 Code §§ 226.7 and 512.

13 57. Therefore, PLAINTIFFS demands on behalf of herself and on behalf of each CALIFORNIA  
14 CLASS Member, one (1) hour of pay for each workday in which an off-duty meal period was not timely  
15 provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second  
16 off-duty meal period was not timely provided for each ten (10) hours of work.

17 58. PLAINTIFFS further demands on behalf of herself and each member of the CALIFORNIA  
18 LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty paid rest period was not  
19 timely provided as required by law.

20 56. By and through the unlawful and unfair business practices described herein, DEFENDANT  
21 has obtained valuable property, money and services from PLAINTIFFS and the other members of the  
22 CALIFORNIA CLASS, including earned wages for all time worked, and has deprived them of valuable  
23 rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit  
24 of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who comply with  
25 the law.

26 59. All the acts described herein as violations of, among other things, the Industrial Welfare  
27 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were  
28 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were

1 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus.  
2 & Prof. Code §§ 17200, *et seq.*

3 60. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled to, and do,  
4 seek such relief as may be necessary to restore to them the money and property which DEFENDANT has  
5 acquired, or of which PLAINTIFFS and the other members of the CALIFORNIA CLASS have been  
6 deprived, by means of the above described unlawful and unfair business practices, including earned but  
7 unpaid wages for all time worked.

8 61. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further entitled to,  
9 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that  
10 injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair  
11 business practices in the future.

12 62. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain, speedy  
13 and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT.  
14 Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and  
15 unfair business practices described herein, PLAINTIFFS and the other members of the CALIFORNIA  
16 CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT  
17 is restrained from continuing to engage in these unlawful and unfair business practices.

18  
19 **SECOND CAUSE OF ACTION**

20 **For Failure To Pay Minimum Wages**

21 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

22 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

23 **and Against All Defendants)**

24 63. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege  
25 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

26  
27 64. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring a  
28 claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial

1 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum  
2 wages to PLAINTIFFS and CALIFORNIA CLASS Members.

3 65. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy,  
4 an employer must timely pay its employees for all hours worked.

5 66. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission  
6 is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed  
7 in unlawful.

8 67. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including  
9 minimum wage compensation and interest thereon, together with the costs of suit.

10 68. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other members  
11 of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As  
12 set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny timely  
13 payment of wages due to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS.

14 69. DEFENDANT's unlawful wage and hour practices manifested, without limitation,  
15 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and  
16 practice that denies accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA  
17 LABOR SUB-CLASS in regards to minimum wage pay.

18 70. In committing these violations of the California Labor Code, DEFENDANT inaccurately  
19 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFFS  
20 and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt  
21 to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the  
22 Industrial Welfare Commission requirements and other applicable laws and regulations.

23 71. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
24 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive the  
25 correct minimum wage compensation for their time worked for DEFENDANT.

26 72. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,  
27 permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members to work without  
28 paying them for all the time they were under DEFENDANT's control. During the CALIFORNIA LABOR

1 SUB-CLASS PERIOD, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS  
2 were paid less for time worked that they were entitled to, constituting a failure to pay all earned wages.

3 73. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation  
4 to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for the true time they  
5 worked, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS have suffered  
6 and will continue to suffer an economic injury in amounts which are presently unknown to them and which  
7 will be ascertained according to proof at trial.

8 74. DEFENDANT knew or should have known that PLAINTIFFS and the other  
9 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time worked.  
10 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay employees  
11 for their labor as a matter of company policy, practice and procedure, and DEFENDANT perpetrated this  
12 scheme by refusing to pay PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
13 CLASS the correct minimum wages for their time worked.

14 75. In performing the acts and practices herein alleged in violation of California labor laws, and  
15 refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time worked and  
16 provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally,  
17 oppressively, and maliciously toward PLAINTIFFS and the other members of the CALIFORNIA LABOR  
18 SUB-CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and  
19 with the despicable intent of depriving them of their property and legal rights, and otherwise causing them  
20 injury in order to increase company profits at the expense of these employees.

21 76. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS therefore  
22 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment  
23 of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or  
24 other applicable statutes. To the extent minimum wage compensation is determined to be owed to the  
25 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's  
26 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to  
27 waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these  
28 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,

1 intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS  
2 Members are entitled to seek and recover statutory costs.

3  
4 **THIRD CAUSE OF ACTION**

5 **For Failure To Pay Overtime Compensation**

6 **[Cal. Lab. Code § 510]**

7 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

8 77. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege  
9 and incorporate by this reference, as though full set forth herein, the prior paragraphs of this Complaint.

10  
11 78. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring a  
12 claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial  
13 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all overtime  
14 worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in  
15 a workday, and/or forty (40) hours in any workweek.

16 79. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy,  
17 an employer must timely pay its employees for all hours worked.

18 80. Cal. Lab. Code § 510 further provides that employees in California shall not be employed  
19 more than eight (8) hours per workday and more than forty (40) hours per workweek unless they receive  
20 additional compensation beyond their regular wages in amounts specified by law.

21 81. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including  
22 minimum wage and overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.  
23 Code § 1198 further states that the employment of an employee for longer hours than those fixed by the  
24 Industrial Welfare Commission is unlawful.

25 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and  
26 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by DEFENDANT to  
27 work for DEFENDANT and were not paid for all the time they worked, including overtime work.

1           83.     DEFENDANT's unlawful wage and hour practices manifested, without limitation,  
2 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and  
3 practice that failed to accurately record overtime worked by PLAINTIFFS and other CALIFORNIA  
4 LABOR SUB-CLASS Members and denied accurate compensation to PLAINTIFFS and the other members  
5 of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the overtime work performed  
6 in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours  
7 in any workweek.

8           84.     In committing these violations of the California Labor Code, DEFENDANT inaccurately  
9 recorded overtime worked and consequently underpaid the overtime worked by PLAINTIFFS and other  
10 CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in an illegal attempt to avoid the  
11 payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial  
12 Welfare Commission requirements and other applicable laws and regulations. As a direct result of  
13 DEFENDANT's unlawful wage practices as alleged herein, the PLAINTIFFS and the other members of the  
14 CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime worked.

15           85.     Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the  
16 overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFFS and the  
17 other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFFS and the other members  
18 of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid collective bargaining agreement  
19 that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFFS brings this  
20 Action on behalf of herself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's  
21 violations of non-negotiable, non-waiveable rights provided by the State of California.

22           86.     During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the other  
23 members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime worked that they  
24 are entitled to, constituting a failure to pay all earned wages..

25           87.     DEFENDANT failed to accurately pay the PLAINTIFFS and the other members of the  
26 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in excess of the  
27 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though  
28 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were required to work,

1 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as evidenced  
2 by DEFENDANT's business records and witnessed by employees.

3 88. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to  
4 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for the true amount of  
5 time they worked, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS have  
6 suffered and will continue to suffer an economic injury in amounts which are presently unknown to them  
7 and which will be ascertained according to proof at trial.

8 89. DEFENDANT knew or should have known that PLAINTIFFS and the other members of  
9 the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked. DEFENDANT  
10 elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor  
11 as a matter of company policy, practice and procedure, and DEFENDANT perpetrated this scheme by  
12 refusing to pay PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for  
13 overtime worked.

14 90. In performing the acts and practices herein alleged in violation of California labor laws, and  
15 refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked  
16 and provide them with the requisite overtime compensation, DEFENDANT acted and continues to act  
17 intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the  
18 CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their legal rights, or the  
19 consequences to them, and with the despicable intent of depriving them of their property and legal rights,  
20 and otherwise causing them injury in order to increase company profits at the expense of these employees.

21 91. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS therefore  
22 request recovery of all overtime wages, according to proof, interest, statutory costs, as well as the  
23 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor  
24 Code and/or other applicable statutes. To the extent minimum and/or overtime compensation is determined  
25 to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,  
26 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are  
27 also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on  
28 behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein

1 was willful, intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR  
2 SUB-CLASS Members are entitled to seek and recover statutory costs.

3  
4  
5 **FOURTH CAUSE OF ACTION**

6 **For Failure to Provide Required Meal Periods**

7 **[Cal. Lab. Code §§ 226.7 & 512 ]**

8 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

9 92. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege  
10 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

11 93. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to  
12 provide all the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA LABOR  
13 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work  
14 performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these  
15 employees from being relieved of all of their duties for the legally required off-duty meal periods. As a  
16 result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS  
17 Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods.  
18 Additionally, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-  
19 CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by  
20 DEFENDANT's business records from time to time. Further, DEFENDANT failed to provide  
21 PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays  
22 in which these employees were required by DEFENDANT to work ten (10) hours of work from time to  
23 time. As a result, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS therefore  
24 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict  
25 corporate policy and practice.

26 94. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC  
27 Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members  
28 who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour

1 of compensation at each employee's regular rate of pay for each workday that a meal period was not  
2 provided.

3 95. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA  
4 LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all  
5 wages earned and due, interest, penalties, expenses and costs of suit.

6  
7 **FIFTH CAUSE OF ACTION**

8 **For Failure to Provide Required Rest Periods**

9 **[Cal. Lab. Code §§ 226.7 & 512 ]**

10 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

11 96. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege  
12 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

13 97. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from time  
14 to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods.  
15 Further, these employees from time to time were denied their first rest periods of at least ten (10) minutes  
16 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)  
17 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest  
18 period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.  
19 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one  
20 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other  
21 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by  
22 DEFENDANT and DEFENDANT's managers.

23 98. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC  
24 Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members  
25 who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour  
26 of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

99. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

## SIXTH CAUSE OF ACTION

### For Failure to Provide Accurate Itemized Statements

**[Cal. Lab. Code § 226]**

**(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

100. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

101. Cal. Labor Code § 226 provides that an employer must furnish employees with an “accurate itemized” statement in writing showing:

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

102. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the wage statements

1 should reflect all applicable hourly rates during the pay period and the total hours worked, and the  
2 applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a).  
3 The wage statements DEFENDANT provided to PLAINTIFFS and other CALIFORNIA LABOR SUB-  
4 CLASS Members failed to identify such information. More specifically, the wage statements failed to  
5 identify the accurate total hours worked each pay period. When the hours shown on the wage statements  
6 were added up, they did not equal the actual total hours worked during the pay period in violation of Cal.  
7 Lab. Code 226(a)(2). DEFENDANT also violated Cal. Lab. Code Section 226(a)(8) for failing to list the  
8 correct legal entity that employed PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members.  
9 Further, DEFENDANT violated Cal. Lab. Code Section 226(a)(9) by failing to list the hours worked and  
10 hourly rates for the “Retro” wage payments, which were regular wage payments. Aside, from the violations  
11 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement  
12 that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time  
13 to time provided PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with  
14 wage statements which violated Cal. Lab. Code § 226.

15 103. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226,  
16 causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
17 CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for  
18 all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state  
19 and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFFS and the other  
20 members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty  
21 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00)  
22 for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to  
23 proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and  
24 each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

25  
26 **SEVENTH CAUSE OF ACTION**

27 **For Failure to Reimburse Employees for Required Expenses**

28 **[Cal. Lab. Code § 2802]**

1       **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

2           104.     PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members reallege and  
3 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

4           105.     Cal. Lab. Code § 2802 provides, in relevant part, that:

5           An employer shall indemnify his or her employee for all necessary expenditures or losses  
6 incurred by the employee in direct consequence of the discharge of his or her duties, or of  
7 his or her obedience to the directions of the employer, even though unlawful, unless the  
8 employee, at the time of obeying the directions, believed them to be unlawful.

9           106.     At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to  
10 indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for required  
11 expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed  
12 to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for expenses which  
13 included, but were not limited to, costs related to using their personal cellular phones on behalf of and for  
14 the benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS  
15 Members were required by DEFENDANT to use their personal cellular phones in order to perform work  
16 related job tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFFS and the  
17 CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular  
18 phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These  
19 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by  
20 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary  
21 expenses incurred by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT  
22 failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members  
23 for these expenses as an employer is required to do under the laws and regulations of California.

24           107.     PLAINTIFFS therefore demands reimbursement for expenditures or losses incurred by  
25 herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for  
26 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate and  
27 costs under Cal. Lab. Code § 2802.

28                       **EIGHTH CAUSE OF ACTION**

**For Failure to Pay Wages When Due**

[ Cal. Lab. Code §§ 201, 202, 203]

(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS

and Against All Defendants)

108. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

109. Cal. Lab. Code § 200 provides, in relevant part, that:

As used in this article:

(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.

(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

110. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

111. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

112. There was no definite term in PLAINTIFFS's or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

113. Cal. Lab. Code § 203 provides, in relevant part, that:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

114. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

115. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the

1 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and who have  
2 not been fully paid their wages due to them, PLAINTIFFS demands thirty days of pay as penalty for not  
3 paying all wages due at time of termination for all employees who terminated employment during the  
4 CALIFORNIA LABOR SUB-CLASS PERIOD and demands an accounting and payment of all wages due,  
5 plus interest and statutory costs as allowed by law.

6 **NINTH CAUSE OF ACTION**

7 **For Failure to Pay Sick Pay Wages**

8 **[ Cal. Lab. Code §§ 201-204, 210, 233, 246]**

9 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

10 **and Against All Defendants)**

11 116. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-  
12 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this  
13 Complaint.

14 117. Cal Lab. Code § 233 provides that an employer must permit an employee to use accrued sick  
15 leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate of entitlement. Cal Lab.  
16 Code § 246 provides that an employee is entitled to sick pay wages for use of accrued sick leave pursuant  
17 to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has  
18 a vested right to sick pay wages, which an employer must calculate and compensate based on one of two  
19 calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the same manner as the  
20 regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the  
21 employee actually works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall  
22 be calculated by dividing the employee's total wages, not including overtime premium pay, by the  
23 employee's total hours worked in the full pay periods of the prior 90 days of employment." Under Cal Lab.  
24 Code §§ 218 and 233, employees may sue to recover underpaid sick pay wages as damages.

25 118. As a matter of policy and practice, DEFENDANT pays sick pay wages to PLAINTIFFS and  
26 the other members of the CALIFORNIA LABOR SUB-CLASS at the incorrect rate of pay. PLAINTIFFS  
27 and the other members of the CALIFORNIA LABOR-SUB-CLASS regularly use accrued sick leave in the  
28 workweeks in which they also earn non-hourly remuneration. As a matter of policy and practice,

1 DEFENDANT pays sick pay wages to PLAINTIFFS and the other members of the CALIFORNIA LABOR-  
2 SUB-CLASS at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-  
3 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the employee's  
4 total wages, not including overtime premium pay, by the employee's total hours worked in the full pay  
5 periods of the prior 90 days of employment. As a result, DEFENDANT underpaid sick pay wages to  
6 PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS.

7 119. Cal. Lab. Code § 204 provides that wages generally are due and payable twice during each  
8 calendar month and are to be paid no later than the payday for the next regular payroll period. Consistent  
9 with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires that, upon use of accrued sick leave,  
10 vested sick pay wages are due and to be paid no later than the payday for the next regular payroll period  
11 after accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an  
12 employer discharges an employee, wages earned and unpaid at the time of discharge are due and payable  
13 immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all unpaid wages no later  
14 than 72 hours after an employee quits his or her employment, unless the employee has given 72-hour notice  
15 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of  
16 quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code § 203 provides that  
17 if an employer willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the  
18 wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the  
19 wages shall not continue for more than thirty (30) days. Likewise, Cal. Lab. Code § 210 provides penalties  
20 for violations of Cal. Lab. Code § 204 and untimely payments during employment. Under Cal. Lab. Code  
21 §§ 203, 210 and 218, employees may sue to recover applicable penalties.

22 120. As alleged herein and as a matter of policy and practice, DEFENDANT routinely underpays  
23 sick pay wages and thus did not timely pay PLAINTIFFS and the other members of the CALIFORNIA  
24 LABOR-SUB-CLASS all owing and underpaid sick pay wages. As a result, DEFENDANT violates Cal.  
25 Lab. Code §§ 201-204, 210, 233, and 246, among other Labor Code provisions. PLAINTIFFS is informed  
26 and believes that DEFENDANT was advised by skilled lawyers and knew, or should have known, of the  
27 mandates of the Labor Code as it relates to PLAINTIFFS's allegations, especially since the California  
28 Supreme Court has explained that "[c]ourts have recognized that 'wages' also include those benefits to

1 which an employee is entitled as a part of his or her compensation, including money, room, board, clothing,  
2 vacation pay, and sick pay.” *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4<sup>th</sup> 1094, 1103 (2007)(emphasis  
3 added). Because DEFENDANT willfully fails to timely pay PLAINTIFFS and the other members of the  
4 CALIFORNIA LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable  
5 penalties.

6 121. Such a pattern, practice, and uniform administration of corporate policy is unlawful and  
7 entitles PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS to underpaid sick  
8 pay wages, including interest thereon, applicable penalties, attorney’s fees, and costs of suit.

9  
10 **TENTH CAUSE OF ACTION**

11 **For Violation of the Private Attorneys General Act**

12 **[Cal. Lab. Code §§ 2698, *et seq.*]**

13 **(By PLAINTIFF Monica Cuthbert and Against All Defendants)**

14 122. Plaintiff, Monica Cuthbert, realleges and incorporates by this reference, as though fully set  
15 forth herein, the prior paragraphs of this Complaint.

16 123. PAGA is a mechanism by which the State of California itself can enforce state labor laws  
17 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law  
18 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law  
19 enforcement action designed to protect the public and not to benefit private parties. The purpose of the  
20 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private  
21 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that  
22 "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover  
23 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot  
24 be subject to arbitration.

25 124. Plaintiff Monica Cuthbert, and such persons that may be added from time to time who satisfy  
26 the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings  
27 this Representative Action on behalf of the State of California with respect to herself and all individuals who  
28 were employed by Defendant in California who worked as a non-exempt employee (“AGGRIEVED

1 EMPLOYEES”) at any time during the time period December 9, 2021 to the earlier of preliminary approval  
2 of December 1, 2023 who did not sign arbitration agreements (the "PAGA PERIOD").

3 125. On July 14, 2022, Plaintiff Monica Cuthbert gave written notice by electronic mail to the  
4 Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the  
5 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The  
6 statutory waiting period for Plaintiff Monica Cuthbert to add these allegations to the Complaint has expired.  
7 As a result, pursuant to Section 2699.3, Plaintiff Monica Cuthbert may now commence a representative civil  
8 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all  
9 AGGRIEVED EMPLOYEES as herein defined.

10 126. The policies, acts and practices heretofore described were and are an unlawful business act  
11 or practice because DEFENDANT (a) failed to provide Plaintiff Monica Cuthbert and the AGGRIEVED  
12 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally required  
13 meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and sick pay  
14 wages, (e) failed to reimburse employees for required expenses, and (f) failed to pay provide wages when  
15 due, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et*  
16 *seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California  
17 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and  
18 thereby gives rise to civil penalties as a result of such conduct.<sup>1</sup> Plaintiff Monica Cuthbert hereby seeks  
19 recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as  
20 the representative of the State of California for the illegal conduct perpetrated on Plaintiff Monica Cuthbert  
21 and the AGGRIEVED EMPLOYEES.

22 127. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To  
23 the extent that any of the conduct and violations alleged herein did not affect PLAINTIFFS during the  
24 PAGA PERIOD, Plaintiff Monica Cuthbert seeks penalties for those violations that affected the  
25 AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 30 Cal.App.5th 504 (2018)

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27 <sup>1</sup>PLAINTIFFS specifically excludes and/or does not allege any claims under California  
28 Labor Code §558(a)(3).

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3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and severally, as  
5 follows:

6 1. On behalf of the CALIFORNIA CLASS:

- 7 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as  
8 a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 9 B) An order temporarily, preliminarily and permanently enjoining and restraining  
10 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 11 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from  
12 compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS;  
13 and,
- 14 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for  
15 restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFFS and  
16 to the other members of the CALIFORNIA CLASS.

17 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 18 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth  
19 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action  
20 pursuant to Cal. Code of Civ. Proc. § 382;
- 21 B) Compensatory damages, according to proof at trial, including compensatory damages for  
22 minimum and overtime compensation due PLAINTIFFS and the other members of the  
23 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-  
24 CLASS PERIOD plus interest thereon at the statutory rate;
- 25 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which  
26 a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA  
27 LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an  
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1 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of  
2 Cal. Lab. Code § 226;

3 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the  
4 applicable IWC Wage Order;

5 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;

6 F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA LABOR  
7 SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,

8 G) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a  
9 penalty from the due date thereof at the same rate until paid or until an action therefore is  
10 commenced, in accordance with Cal. Lab. Code § 203.

11 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

12 A) Recovery of civil penalties as prescribed by the Labor Code Private  
13 Attorneys General Act of 2004; and,

14 B) An award of attorneys' fees and cost of suit, as allowable under the  
15 law, including, but not limited to, pursuant to Labor Code §2699.

16 4. On all claims:

17 A) An award of interest, including prejudgment interest at the legal rate;

18 B) Such other and further relief as the Court deems just and equitable; and,

19 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,  
20 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

21  
22 Dated: October 30, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

23  
24  
25 By: /s/ Nicholas J. De Blouw

Norman B. Blumenthal

Kyle R. Nordrehaug

Nicholas J. De Blouw

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27 *Attorneys for PLAINTIFFS*  
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**DEMAND FOR A JURY TRIAL**

PLAINTIFFS demands a jury trial on issues triable to a jury.

Dated: October 30, 2023                      BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw  
Norman B. Blumenthal  
Kyle R. Nordrehaug  
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*Attorneys for PLAINTIFFS*